

**STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097**

GLENN M. OKIMOTO  
DIRECTOR

Deputy Directors  
FORD N. FUCHIGAMI  
JAN S. GOUVEIA  
RANDY GRUNE  
JADINE URASAKI

IN REPLY REFER TO:

Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawaii

RECISSION OF PRIOR LB ACTION UNDER ITEM H, AUGUST 14, 2009, LAND REVENUE  
ENHANCEMENT 2., SUMMARY OF RECOMMENDATIONS, EXHIBITS D-1 AND D-2,  
KONA INT'L AIRPORT AT KEAHOLE, SOUTH KONA, ISLAND OF HAWAII,  
AND HONOLULU INT'L AIRPORT, ISLAND OF OAHU

HAWAII  
OAHU

APPLICANT:

State of Hawaii, Department of Transportation, Airports Division

REMARKS:

Under Item H, of the August 14, 2009 agenda, the Land Board approved, subject to Federal Aviation Administration (FAA) prior approval, withdrawing lands currently set aside to Department of Transportation for airport purposes identified in the submittal as Ualena Street Industrial Properties and Kona Airport Industrial Land, and resetting aside those lands to DLNR Land Division for income production purposes.

The Department of Transportation (DOT) requests the Board rescind its action and return the lands to the status held prior to the action of August 14, 2009.

The DOT has received the FAA position on the Ualena Street Industrial Properties, included in the HNL ADO Evaluation of DLNR Land Release Request (attached), stating, "We cannot consent to release revenue producing Ualena Street property. The release of revenue producing properties will constitute revenue diversion from the airport to another state agency, and will be a violation of the compliance obligations."

The FAA further commented on a proposal by DLNR to exchange Ualena Street Industrial Properties for vacant land at Kanoiehua Avenue in Hilo in a letter dated May 11, 2010 (attached), saying in part, "...we do not concur with the Hawaii Department of Land and Natural Resources' (DLNR) prior suggestion for a land exchange that proposed to trade a parcel at Kanoiehua (sic) Avenue for land at Ualena Street."

Also in the May 11, 2010 letter, the FAA stated in part, "We have also considered DLNR's request that the additional land release proposal for Kona International be separated from the resolution of the Land Use Audit. We are not at liberty to alter FAA compliance requirements. As we previously disclosed, Order 5190.6b, Airport Compliance Manual requires that we evaluate the State's compliance record and willingness to resolve outstanding compliance issues.

In view of the circumstances, the FAA cannot separate the land release request from the Land Use Audit issues that remain unsolved.”

One of the major issues in the Land Use Audit (attached) that is left unsolved, is replacement of approximately 11 acres at Sand Island that was set aside to the Airports Division for bulk fuel storage, but was withdrawn to allow for realignment of Sand Island Parkway and to provide a baseyard for the City and County of Honolulu. The DOT agreed to the withdrawal of the 11 acres in return for a promise of replacement in kind in the future.

In May 2000, a transaction was recorded in which the Department of Transportation Airports Division purchased 11.344 acres at the Kapalama Military Reservation to replace the surrendered 11 acres. A request for issuance of a GEO was made on June 6, 2000. To date, no GEO for the property has been issued. In 2001, the Airports Administration requested release of the 11.344 acre parcel from the FAA so it could be transferred to the Harbors Division for use as a container yard.


The FAA is willing to grant release, subject to repayment of the 1) amount of airport funds used to purchase the property, 2) rents generated from the property but not received by the Airports Division, 3) amount of airport funds expended on the property subsequent to the acquisition, and 4) replacement of the original 11 acres, which the purchase of the property was intended to satisfy.

While all four of the items are part of the land audit findings, the most difficult at this point is replacement of the 11 acres. To date, DLNR has not proposed any specific replacement property. Unless the Airports Division receives a suitable replacement property, the FAA will not close out the land audit issue and consequently, will not approve the action contained in the August 14, 2009 agenda.


RECOMMENDATION:

That the Board Rescind its prior action of Item H of the August 14, 2009 Land Board Agenda, Land Revenue Enhancement 2., Summary of Recommendations, Exhibits D-1 and D-2, Kona International Airport at keahole, South Kona, Island of Hawaii, and Honolulu International Airport, island of Oahu, and return the lands to the status held prior to that action.

Respectfully submitted,

  
GLENN M. OKIMOTO, Ph.D.  
Director of Transportation

APPROVED FOR SUBMITTAL:

  
WILLIAM J. AILA, JR.  
Chairperson and Member

## **Agenda**

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AGENDA  
FOR THE MEETING OF THE  
BOARD OF LAND AND NATURAL RESOURCES

DATE: FRIDAY, AUGUST 14, 2009  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

### **A. MINUTES**

1. July 22, 2009 Minutes

### **H. ADMINISTRATION**

1. STAFF PRESENTATION

**Attachment:** General Maintenance Standards: Land Based Recreation, Boating Facility

### **1. STATE PARKS**

1. Appoint Staff to be Hearing Officers for purposes of Conducting Public Hearings related to Proposed Amendments to Certain Sections of Chapter 13-146, HAR for the State Parks System to allow for Overnight Accommodations to be reserved via the Internet, Payment by Credit Card and to Charge a Service Fee, and make other substantive and technical amendments relating to clarifying management action and regulatory powers;
2. Establish parking fees at certain State Parks, Monuments, Recreation Areas, and Waysides and Authorize the Chairperson to issue an Invitation for Bids, Concession, Agreement or Other Public Process as Allowed by Law, such as a Request for Proposals, and to Award a Contract Related to Parking;
3. Increase Fees for Overnight Accommodations at State Parks;
4. Establish Commercial Filming Fees for State Parks;

**Attachment:** Proposed Chapter 13-146 Amendments

### **2. DIVISION OF BOATING AND OCEAN RECREATION (DOBOR)**

1. Preliminary Approval to Amend Portions of DOBOR's Hawaii Administrative Rules, Title 13, sub-title 11, Chapters 230 et. seq., Parts I, II, and III, and Conduct Public Hearings related to the Proposed Amendments to the Administrative Rules;
2. Authorize the issuance of Contracts, Concessions, Leases and Other Agreements as Allowed by Law on

Lands, Including Submerged Lands Under DOBOR's Management Jurisdiction for Income Production;

3. Delegation of Authority to the Chairperson to Select the Appropriate Processes for Offering and Disposing of Long-term Parking Agreements as allowed by law for the Generation of Parking Revenues at the Ala Wai Small Boat Harbor and the Kailua-Kona Pier;
4. Delegation of Authority to the Chairperson to Select the Appropriate Processes to Offering and Disposing of a Long-term Agreement for the Operation of the Heeia Kea Small Boat Harbor Fuel Dock, Convenience Store, and Snack Shop for DOBOR's Income Production, whether by Lease, Concession or other agreement as allowed by law;

**Attachments:**

Exhibit A: Rules: Hawaii Administrative Rules (HAR)

Exhibit B: Proposed HAR amendments addressing mooring and other related fees

Exhibit C: Ala Wai Small Boat Harbor, Parking Revenue

Exhibit D: Ala Wai Small Boat Harbor, Parking Map

Exhibit E: Heeia Kea Small Boat Harbor, Map

**3. DIVISION OF FORESTRY & WILDLIFE (DOFAW)**

1. Approve Updated fees for camping, and other recreational uses in forest reserves;
2. Approval to Conduct Public Hearings to Repeal Hawaii Administrative Rules (HAR) Chapter 13, §13-125, "RULES REGULATING WILDLIFE SANCTUARIES," and Adopt Chapter 13, §13-126, "RULES REGULATING WILDLIFE SANCTUARIES";
3. Set aside to DLNR, Division of Forestry and Wildlife for Wildlife Sanctuary Purposes and Issuance of a Management Right-of-Entry, Eighteen (18) Wildlife Sanctuaries Previously Designated by the Board and Identified in Chapter 13-125, HAR;
4. Set aside to DLNR, Division of Forestry and Wildlife for Wildlife Sanctuary Purposes and Issuance of a Management Right-of-Entry, Pālā'au, Moloka'i, Tax Map Keys: (2)5-1-1:2, 4, 5, and the Unencumbered Lands Seaward of (2)5-1-1:2, 4 AND (2) 5-2-11:4;
5. Authorize the Chairperson of DLNR to Develop and Operate Public Shooting Ranges Via Cooperative Agreement, Concession, or Lease;
6. To Conduct Public Hearings to Amend Chapter 13, §13-121, "RULES REGULATING THE HUNTING OF WILDLIFE ON PUBLIC LANDS AND OTHER LANDS" to Establish Rules Regulating the Use of Public Shooting Ranges;
7. Set Aside to DLNR, DOFAW for Na Ala Hele Trail and Off Highway Vehicle Park Purposes and Issuance of a Management Right-of-Entry, Wahikuli, Maui, Tax Map Key: (2)4-5-21:4;

**Attachments:**

C. 1.1: Camping Fees

C. 1.2: Forest Reserve System Recreational Commercial Permit fees

C. 2.1: Repeal of Chapter 13-125 and adoption of Chapter 13-126 (HAR)

C. 2.2:

C. 2.3:

C. 4.1: Pālā au Wetland: Land Ownership

C. 6.1: Rules: Part 2 Wildlife: Chapter 121 Rules regulating the hunting of wildlife on public lands

C. 7.1: Portion of Government lands of Wahikuli, Maui

C. 7.2: Map for tax map key: (2) 4-5-21:4

**4. ENGINEERING (Asset Management)**

1. Permission to Hire a Consultant to Develop Pilot Asset Management System for Selected DLNR Facilities.

**5. LAND (Revenue Enhancement)**

1. Designation of certain Revenue Generating Properties as income-producing assets and reserve these properties to DLNR for the purpose of generating revenues to fund Plan B of the Recreational Renaissance, and ultimately upon receiving the necessary legislation, to also repay bonds issued for DLNR's original or any approved Recreational Renaissance plan.
2. Subject to Federal Aviation Administration prior approval, approve of and recommend to the Governor the issuance of executive orders: (1) withdrawing lands currently set aside to Department of Transportation for airport purposes, identified above as Ualena Street Industrial Properties and Kona Airport Industrial Lands, and resetting aside those lands to DLNR Land Division for income production purposes; and (2) setting aside lands identified above as Kanoiehua Industrial-Commercial Lot to Department of Transportation for airport purposes.
3. Authorization to issue long-term leases for the Revenue Generating Properties via public auction, requests for proposals, or any other process authorized under Chapter 171, Hawaii Revised Statutes, as amended ("HRS").
4. Delegation of authority to the Chairperson of the Board of Land and Natural Resources (the "Chairperson") to: (a) determine the appropriate process for offering and disposing of leases for each of the Revenue Generating Properties; and (b) determine the terms and conditions of each lease, provided, however, that all process, terms and conditions determined by the Chairperson shall comply with the provisions of HRS Chapter 171.
5. Delegation of authority to the Chairperson to amend the terms and conditions of any lease, sale of a lease, public auction, request for proposal, or any other disposition previously approved/authorized by the Board, including, but not be limited to, amending the method of disposition, amending the terms and conditions of a lease to be offered for sale, adjusting the upset lease rent for leases to be sold at public auction, and amending the procedures of a request for proposal to authorize the Chairperson to select the successful applicant, negotiate the terms of any development agreement or lease, and execute any documents that are necessary or appropriate to effectuate the intent of the disposition; provided, however, that any amended terms and conditions shall comply with the provisions of HRS Chapter 171 and be subject to review and approval by the Department of the Attorney General.
6. Authorize the revenues generated from leases of the Revenue Generating Properties to be held separately in a special fund or account to fund Plan B of the Recreational Renaissance, and ultimately upon receiving the necessary legislation, to also repay bonds issued for DLNR's original or any approved Recreational Renaissance plan.
7. Authorize the hiring of an independent real estate consultant to review DLNR's land inventory, identify properties with development and revenue-generating potential, and provide recommendations on the disposition of leases for those properties; and delegate to the Chairperson the authority to determine the scope of work of the consultant's contract, select the parcels to be reviewed under the contract, enter into supplemental contracts to address unforeseen conditions, and sign the necessary documents pertaining to the project.

**Attachments:**

- Exhibit D-1: Withdrawing lands currently set aside to DOT, Ualena Street Parcels  
Exhibit D-2: Withdrawing lands currently set aside to DOT, Kona Airport

## SUMMARY OF RECOMMENDATIONS

**\*\* On any of the above items, the Board of Land and Natural Resources may convene an executive meeting pursuant to sections 92-4 and 92-5(a) of the Hawaii Revised Statutes to consult with the Board's attorney on issues pertaining to the Board's powers, duties, privileges, immunities and liabilities or as otherwise allowed by law.**

**ALL MATERIALS LISTED ON THIS AGENDA ARE AVAILABLE FOR REVIEW IN THE DLNR CHAIRPERSON'S OFFICE OR ON THE DEPARTMENT WEBSITE THE WEEK OF THE MEETING AT:  
<http://hawaii.gov/dlnr/chair/meeting/index.html>**

**INDIVIDUALS REQUIRING SPECIAL ASSISTANCE OR ACCOMMODATIONS ARE ASKED TO CONTACT THE CHAIRPERSON'S OFFICE AT (808) 587-0400 AT LEAST THREE DAYS IN ADVANCE OF THE MEETING.**

## SUMMARY OF RECOMMENDATIONS

### STATE PARKS sub-items a-d:

1. Approve the Chairperson to appoint staff to be hearing officers for purposes of conducting public hearings related to proposed amendments to certain sections of Chapter 13-146 as proposed in the attached draft of amendments to Chapter 13-146 HAR, pending review and approval by the Office of the Attorney General.
2. Approve the amount of the proposed parking fees and to charge such fees as described above at the identified State Park areas and to authorize the Chairperson to conduct an Invitation for Bids, Concession Agreement or other public process as allowed by law, such as a Request for Proposals, and to award and enter an appropriate Agreement for parking fees collection and remittance to the Department for the purpose of generating revenues to fund Plan B of the Recreational Renaissance, and ultimately upon receiving the necessary legislation, to also assist with repaying bonds issued for DLNR's *original or any approved* Recreational Renaissance plan.
3. Approve the increase in lodging and camping fees at State Parks as described above for the purpose of generating revenues to fund Plan B of the Recreational Renaissance, and ultimately upon receiving the necessary legislation, to also repay bonds issued for DLNR's *original or any approved Recreational Renaissance* plan.
4. Approve the filming fee of \$100.00 per day and delegate to the Chairperson the authority to renegotiate the MOA with the Hawaii Film Office of DBEDT.

### DOBOR sub-items e-h:

1. Preliminarily approve amendments to selected portions of DOBOR's Hawaii Administrative Rules, Title 13, Sub-title 11, Chapter 230 et. seq., Parts I, II, and III, more particularly detailed in Exhibits A and B attached hereto, and delegation of authority to the Chairperson to appoint staff to be hearing officers to conduct public hearings related to the proposed amendments to DOBOR's Hawaii Administrative Rules, Parts I, II, and III.
2. Authorize the issuance of contracts, concessions, leases and other Agreements as allowed by law on lands, including submerged lands under DOBOR's management jurisdiction for income production.
3. Delegate to the Chairperson the authority to: (a) select the appropriate processes for offering and disposing of long-term parking agreements for the generation of parking revenues at the Ala Wai Small Boat Harbor and Kailua-Kona Pier; and (b) determine the terms and conditions of each agreement, provided however, all processes selected and terms and conditions in the agreements shall comply with law, such as Chapters 102, 171 or 200 of the Hawaii Revised Statutes.

4. Delegate to the Chairperson the authority to: (a) select the appropriate processes for offering and disposing of a long-term agreement for the operation of the Heeia Kea Small Boat Harbor Fuel Dock, Convenience Store and Snack Shop for DOBOR's income production, whether by lease, concession or other agreement as allowed by law; and (b) determine the terms and conditions of each agreement, provided however, all processes selected and terms and conditions in the agreements shall comply with law, such as Chapters 102, 171, or 200 of the Hawaii Revised Statutes.
5. Authorize the Chairperson to cancel at the appropriate time as determined by the Chairperson the Revocable Permit, BO-07-31, issued to the Deli Corporation for operation of the fuel dock, convenience store and snack bar concession at Heeia Kea SBH.
6. All legal instruments such as contracts, leases, concessions and other agreements, and public solicitation documents shall be subject to the following:
  - a. Review and approval by the Department of the Attorney General; and
  - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

DOFAW sub-items i-o:

1. Pursuant to the authority granted to the Board by HRS Chapter 183 and HAR Chapter 104, and HRS Chapter 198D and HAR Chapter 13-130-42, approve updated fees for Forest Reserve and Na Ala Hele system camping permits, with fees to be deposited into the respective program special funds.
2. Pursuant to the authority granted to the Board by HRS Chapter 183 and HAR Chapter 104, approve updated fees for Forest Reserve system commercial permits as discussed above and detailed in Attachment C. 1. 2., with the fees collected to be deposited into the Forest Stewardship special fund and used for future maintenance and operation of the recreational facilities.
3. Approve that the Division of Forestry and Wildlife proceed with revisions to the wildlife sanctuary rules and consult with affected communities on access issues in the development of the draft rule.
4. Approve that the Division of Forestry and Wildlife conduct public hearings to repeal chapter 13-125 and adopt chapter 13-126, Hawaii Administrative Rules, subject to review and approval by the Chairperson and the Office of the Attorney General.
5. Authorize the Chairperson to set dates and times for public hearings, and appoint corresponding hearings officers.

6. Authorize any fees collected pursuant to the permitting of commercial activities in wildlife sanctuaries be deposited in the Endangered Species Trust Fund, pursuant to chapter 195D-31.

That the Board, subject to Applicant fulfilling the Applicant Requirements above in sub-item k:

7. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to Department of Land and Natural Resources, Division of Forestry and Wildlife under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
  - a. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - b. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  - c. Review and approval by the Department of the Attorney General; and
  - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
8. Authorize the issuance of a management right-of-entry to Division of Forestry and Wildlife covering the subject area, which are by this reference incorporated herein and further subject to the following:
  - a. The standard terms and conditions of the most current right-of-entry document form, as may be amended from time to time; and
  - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

That the Board, subject to Applicant fulfilling the Applicant Requirements above in sub-item l:

9. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to Department of Land and Natural Resources, Division of Forestry and Wildlife under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
  - a. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - b. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  - c. Review and approval by the Department of the Attorney General; and

- d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
10. Authorize the issuance of a management right-of-entry to Division of Forestry and Wildlife covering the subject area, which are by this reference incorporated herein and further subject to the following:
    - a. The standard terms and conditions of the most current right-of-entry document form, as may be amended from time to time; and
    - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
  11. Authorize the Chairperson to proceed with development of public shooting ranges as described above and to negotiate and enter into cooperative agreements, concessions, or leases pursuant to Chapters 171-56 and/or Chapter 102, Hawaii Revised Statutes, for the operation and management of public shooting ranges, subject to review and approval by the Office of the Attorney General.
  12. Authorize the Division of Forestry and Wildlife to conduct public hearings to amend Hawaii Administrative Rules Chapter 13-121 to establish rules regulating the use of public shooting ranges, subject to review and approval by the Office of the Attorney General.
  13. Authorize the Chairperson to set dates and times for public hearings, and appoint corresponding hearings officers.
- That the Board, subject to Applicant fulfilling the Applicant Requirements above in sub-item o:
14. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to Department of Land and Natural Resources, Division of Forestry and Wildlife under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
    - a. Reservation for future withdrawal of lands covering tmk: 4-5-21:portion 4 (toe), south of Hanakea Gulch along the boundary of the Land Use Commission Urban Classification boundary or other boundary acceptable to the Hawaii Housing Finance and Development Corporation (HHFDC) and DLNR for the Villages of Leiali'i project;
    - b. Reservation for designation of easements for potable water wells 5 and 6 located on tmk: 4-5-21:4, transmission lines, facilities and improvements and access thereto for the Villages of Leiali'i project;
    - c. Access to the subject property, TMK 4-5-21: 4, over TMK 4-5-21: 3 and 22 shall be by temporary rights-of-entry in forms and content acceptable to HHFDC and the Department of Land and Natural Resources, respectively;

- d. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - e. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  - f. Review and approval by the Department of the Attorney General; and
  - g. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
15. Authorize the issuance of a management right-of-entry to Housing Finance and Development Corporation for tmk: 4-5-21:22 and portion of 4 (toe), and Division of Forestry and Wildlife for tmk: 4-5-21:portion of 4, which are by this reference incorporated herein and further subject to the following:
- a. The standard terms and conditions of the most current right-of-entry document form, as may be amended from time to time; and
  - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

ENGINEERING (ASSET MANAGEMENT) sub-item p

- 1. That the Board of Land and Natural Resources authorize the hiring of a consultant for the project indicated and authorize the Chairperson to sign the necessary documents pertaining to the project, subject to review and approval by the Attorney General and Governor's approval.
- 2. Recommend that the Board authorize the Chairperson, subject to review and approval by the Attorney General, to enter into supplemental contracts to address unforeseen conditions and sign the necessary documents to implement the additional work.

LAND DIVISION (REVENUE ENHANCEMENT) sub-items q-v

- 1. Designate the Revenue Generating Properties identified above as income-producing assets and reserve these properties to DLNR for the purpose of generating revenues to fund Plan B of the Recreational Renaissance, and ultimately upon receiving the necessary legislation, to also repay bonds issued for DLNR's *original* or any approved Recreational Renaissance plan.
- 2. Subject to Federal Aviation Administration prior approval, approve of and recommend to the Governor the issuance of executive orders: (1) withdrawing lands currently set aside to Department of Transportation for airport purposes, identified above as Ualena Street Industrial Properties and Kona Airport Industrial Lands, and

resetting aside those lands to DLNR Land Division for income production purposes; and (2) setting aside lands identified above as Kanoelehua Industrial-Commercial Lot to Department of Transportation for airport purposes, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:

- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize issuance of long-term leases for the Revenue Generating Properties via public auction, requests for proposals, or any other process authorized under Chapter 171, Hawaii Revised Statutes, as amended ("HRS").
4. Delegate to the Chairperson of the Board of Land and Natural Resources (the "Chairperson") the authority to: (a) determine the appropriate process for offering and disposing of leases for each of the Revenue Generating Properties; and (b) determine the terms and conditions of each lease, provided, however, that all process, terms and conditions determined by the Chairperson shall comply with the provisions of HRS Chapter 171.
5. Delegate to the Chairperson the authority to amend the terms and conditions of any lease, sale of a lease, public auction, request for proposal, or any other disposition previously approved/authorized by the Board, including, but not be limited to, amending the method of disposition, amending the terms and conditions of a lease to be offered for sale, adjusting the upset lease rent for leases to be sold at public auction, and amending the procedures of a request for proposal to authorize the Chairperson to select the successful applicant, negotiate the terms of any development agreement or lease, and execute any documents that are necessary or appropriate to effectuate the intent of the disposition; provided, however, that any amended terms and conditions shall comply with the provisions of HRS Chapter 171 and be subject to review and approval by the Department of the Attorney General.
6. Authorize the revenues generated from leases of the Revenue Generating Properties to be held separately in a special fund or account to fund Plan B of the Recreational Renaissance, and ultimately upon receiving the necessary legislation, to also repay bonds issued for DLNR's *original* or any approved Recreational Renaissance plan.

7. Authorize the hiring of an independent real estate consultant to review DLNR's land inventory, identify properties with development and revenue-generating potential, and provide recommendations on the disposition of leases for those properties; and delegate to the Chairperson the authority to determine the scope of work of the consultant's contract, select the parcels to be reviewed under the contract, enter into supplemental contracts to address unforeseen conditions, and sign the necessary documents pertaining to the project, subject to review and approval by the Department of the Attorney General and approval by the Governor.



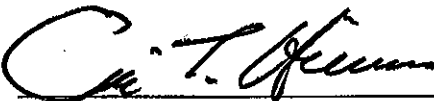
Respectfully submitted,

RECREATIONAL RENAISSANCE TEAM

  
DAN S. QUINN  
State Parks Administrator


  
ED R. UNDERWOOD  
DOBOR Administrator

  
PAUL J. CONRY  
DOFAW Administrator

  
ERIC T. HIRANO  
Chief Engineer, Administrator

  
MORRIS M. ATTA  
Land Division Administrator

Approved for Submittal:

  
LAURA H. THIELEN, Chairperson  
Board of Land and Natural Resources

LINDA LINGLE  
GOVERNOR



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

BRENNON T. MORIOK  
DIRECTOR

Deputy Directors  
MICHAEL D. FORMBY  
FRANCIS PAUL KEENO  
BRIAN H. SEKIGUCHI  
JIRO A. SUMADA

IN REPLY REFER TO:

AIR-PM  
08.0696

October 17, 2008

Mr. Ron V. Simpson  
Manager, Airports District Office  
Federal Aviation Administration  
Western Pacific Region  
P. O. Box 50244  
Honolulu, Hawaii 96850-0001

Dear Mr. Simpson:

Subject: Total Release from Grant Agreements of Ualena Street Parcels  
Honolulu, Island of Oahu, Hawaii (Subject Properties)  
TMKs (1) 1-1-04:01, 02, 03, 05 & 06.

The State of Hawaii, Department of Transportation (DOT) respectfully requests the Federal Aviation Administration (FAA) under FAA Order 5190.6A, Chapter 7, Section 3, Paragraph 7-8 approve a total release of the above-referenced Subject Properties located on Ualena Street, Honolulu, Hawaii, from the terms and conditions of the applicable grant agreements with the FAA. As explained below, DOT has determined that these lands are not critical for airport activities and/or airport facilities. In addition, there was no federal investment in these lands, i.e., federal Airport Improvement funds were not used to acquire or improve the Subject Properties.

The following information is provided in support of DOT's request for a total release of the Subject Property and responds to the specific questions listed in FAA Order 5190.6A, Chapter 7, Section 5, Paragraph 7-36.

(a) What agreement(s) with the United States are involved?

*Response: A federal grant was utilized in the Update Airport Master Plan Study and Noise Compatibility Plan Study, Honolulu International Airport, State Project No. AO-1011-08, AIP Project No. 3-15-0005-77. The grant specified that the Sponsor shall comply with the Part V. Assurances dated 3/2005.*

*In addition, the DOT has received many federal grants for Honolulu International Airport, the most recent was AIP Project No. 3-15-0005-94, Contract*

*No. DTFA08-08-CS0598 dated June 19, 2008, which also specified compliance with all grant assurances.*

(b) What is requested?

*Response: DOT is requesting a total release of the Subject Properties to allow these lands to be transferred to the State of Hawaii, Department of Land and Natural Resources (DLNR). The Subject Properties consists of approximately 3.4 acres as shown on the enclosed Exhibit A.*

*DLNR manages over 1.3 million acres of public lands and the majority of the State's natural resources. DLNR is also charged with management of the State's water resources, ocean waters, navigable streams, coastal areas, and minerals, as well as the management of the state parks, historical sites, forests, forest reserves, aquatic life, aquatic life sanctuaries, public fishing areas, boating, ocean recreation, coastal programs, wildlife, wildlife sanctuaries, game management areas, public hunting areas, natural area reserves, and other functions assigned by law.<sup>1</sup>*

*In 1991 and 1992, DOT acquired the Subject Properties and several other parcels (totaling approximately 23.404 acres) on Ualena Street, Honolulu, Island of Oahu, Hawaii. DOT acquired these lands on Ualena Street with the intent of using those lands to expand various airport facilities at the Honolulu International Airport. DOT Airport special funds (airport revenues) were used to acquire the Ualena Street properties. No federal funds, however, were involved in DOT's acquisition of these lands.*

*The Subject Properties and other Ualena Street parcels acquired by DOT are held by DOT pursuant to Governor's Executive Order No. 3894 (EO) dated January 17, 2002, for "airport purposes". DOT acquired their properties subject to existing leases and permits issued for various purposes.*

*DOT has determined that the Subject Properties are no longer required to expand airport facilities as originally intended airport expansion purpose and has agreed to withdraw those parcels from the EO and transfer those parcels to DLNR.*

*Because the Subject Properties were acquired with DOT Airport special funds (airport revenues), DLNR will compensate DOT by transferring to DOT a 2.847-acre industrial-commercial mixed use (MCX-20 zoning district) parcel in Hilo, Hawaii, Tax Map Key No: (3) 2-2-37:41. If the value of the Subject Properties exceeds the value of the Hilo parcel, DLNR will pay the difference in value to DOT in cash.*

---

<sup>1</sup> Section 171-3, Hawaii Revised Statutes, as amended.

- (c) Why the release, modification, reformation or amendment is requested?

*Response: See response to Question (b) above*

- (d) What facts and circumstances justify the request?

*Response: See response to Question (b) above*

- (e) What requirements of state or local law should be provided for in the language of an FAA issued document if the request is consented to or granted?

*Response: None that we know of at this time.*

- (f) What property or facilities are involved?

*Response: The Subject Properties are shown on the attached Exhibit A as Tax Map Key Numbers (1) 1-1-04:01, 02, 03, 05 and 06. Salient property information is summarized on the table attached as Exhibit B.*

- (g) How the property was acquired or obtained by the airport owner?

*Response: See response to Question (b) above.*

- (h) What is the present condition and what present use is made of any property or facilities involved?

*Response: Salient property information is summarized on the table attached as Exhibit B.*

- (i) What use or disposition will be made of the property or facilities?

*Response: The Subject Properties will be returned to DLNR, which owns and manages the majority of the State of Hawaii's public lands. As the manager of the public land trust, DLNR has a fiduciary duty to manage the public lands for the benefit of the State of Hawaii, the general public, and the beneficiaries of the public land trust.*

*The lease rent revenues generated from the Subject Properties will be used to fund DLNR's management of approximately 1.3 million acres of public lands and DLNR's various public functions/facilities/programs (see response to Question (b) above)*

- (j) What is the FMV of the property or facilities?

**Response:** *Salient property information is summarized on the table attached as Exhibit B.*

- (k) What proceeds are expected from the use or disposition of the property and what will be done with any net revenues derived?

**Response:** *Since the Subject Properties were acquired with DOT Airport special funds (airport revenues), DLNR will compensate DOT by transferring to DOT a 2.847-acre industrial-commercial mixed use (MCX-20 zoning district) parcel on the corner of Kanoielehua and Kekuanaoa Avenues, Hilo, Hawaii, Tax Map Key No: (3) 2-2-37:41. If the value of the Subject Properties exceeds the value of the 2.847-acre Hilo parcel, DLNR will pay the difference in value to DOT in cash.*

*The 2.847-acre Hilo parcel is located at the entrance intersection to the Hilo International Airport. DOT has sought to acquire this parcel for years because it lies within the runway protection zone of the Hilo International Airport and acquisition of the property would allow DOT to regulate any development or uses of the property in accordance with FAA regulations. Any cash proceeds received by DOT would be deposited into DOT's airports special fund.*

- (l) A comparison of the relative advantage or benefit to the airport from sale or other disposition as opposed to retention for rental income?

**Response:** *Since 2002, DOT has sought to acquire the 2.847-acre Hilo parcel because it is within the Hilo International Airport runway protection zone and the acquisition would allow DOT to regulate any development or uses of the property to ensure compliance with FAA regulations. The acquisition of this 2.847-acre parcel would further DOT's management of the Hilo International Airport and ensure the existing runways can continue to operate without modification. Maintaining the viability of the airport operations exceeds any benefit the rent revenues from the Subject Properties currently provide. Aside from providing rental income, the Subject Properties do not serve any other airport-related purpose or facility.*

- (m) A plan identifying the intangible benefits, if any, accruing to the airport, the amount attributed to the intangible benefits and the merit of their application as an offset against the FMV of the property to be released. The plan should also include as a minimum:

**Response:** *The intangible benefit accruing to the airport is the ability to acquire land (without any cash outlay) within the Hilo International Airport runway protection zone*

Mr. Ron V. Simpson  
October 17, 2008  
Page 5

*and ensure any development or uses of the property are consistent with FAA regulations. The acquisition of this 2.847-acre parcel will help ensure the usefulness of the Hilo International Airport runways. In contrast, while the Subject Property provides lease rent revenues, the property does not provide any other airport related purpose.*

Finally, enclosed are the exhibits as required by FAA Order 5190.6A, Chapter 7, Section 5, Paragraph 7-36(4).

We believe the above information supports DOT's request for a total release of the Subject Property and look forward to receiving a favorable determination from the FAA. If you have any questions regarding this request or require any additional information, please contact Mr. Sidney Hayakawa, Airports Administrative Services Officer, at 838-8604.

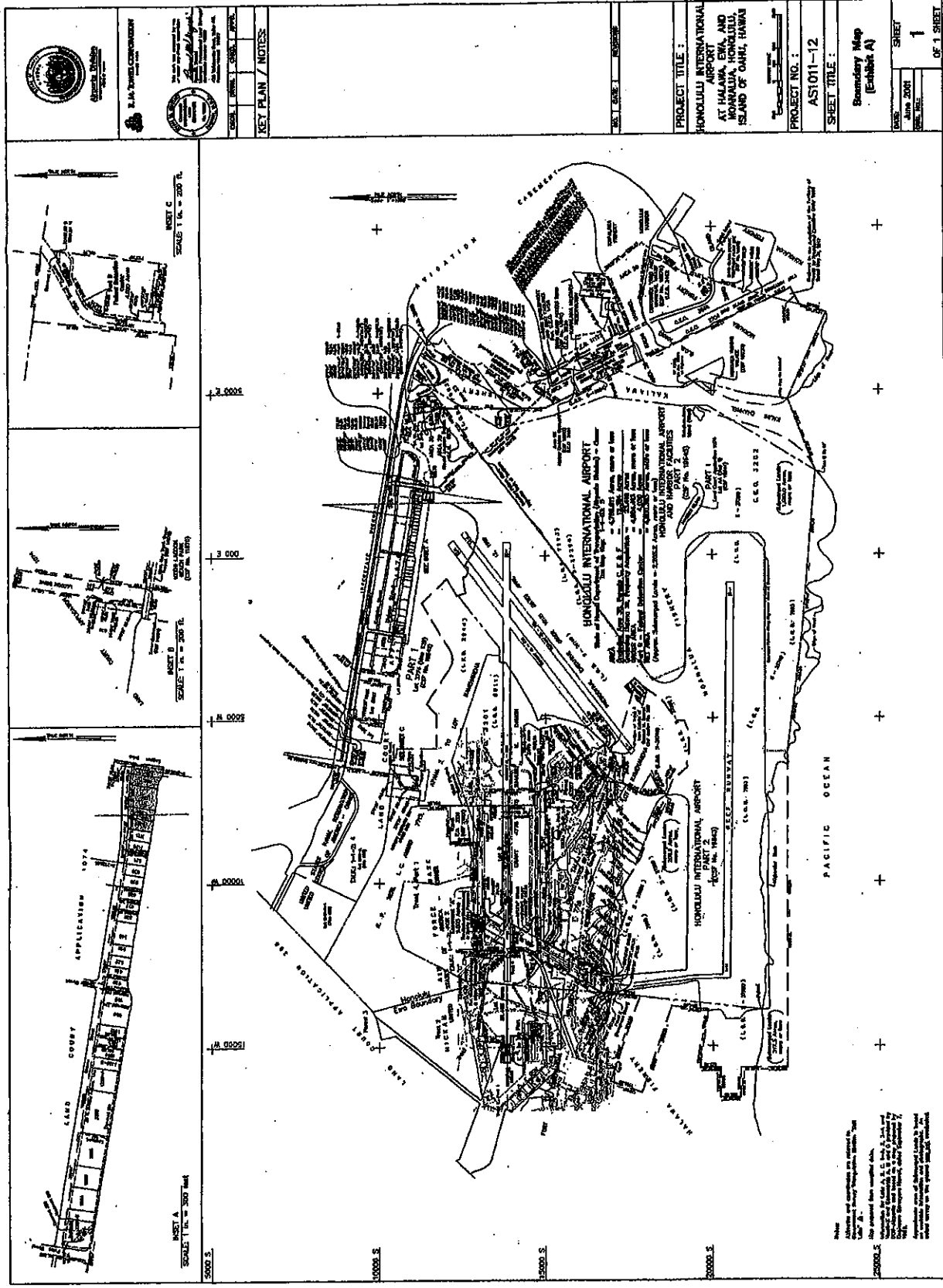
Very truly yours,



*Francis Paul Keemo*

*for* BRENNON T. MORIOKA, Ph.D., P.E.  
Director of Transportation

Enclosures

bc: DEP-A  
DLNR



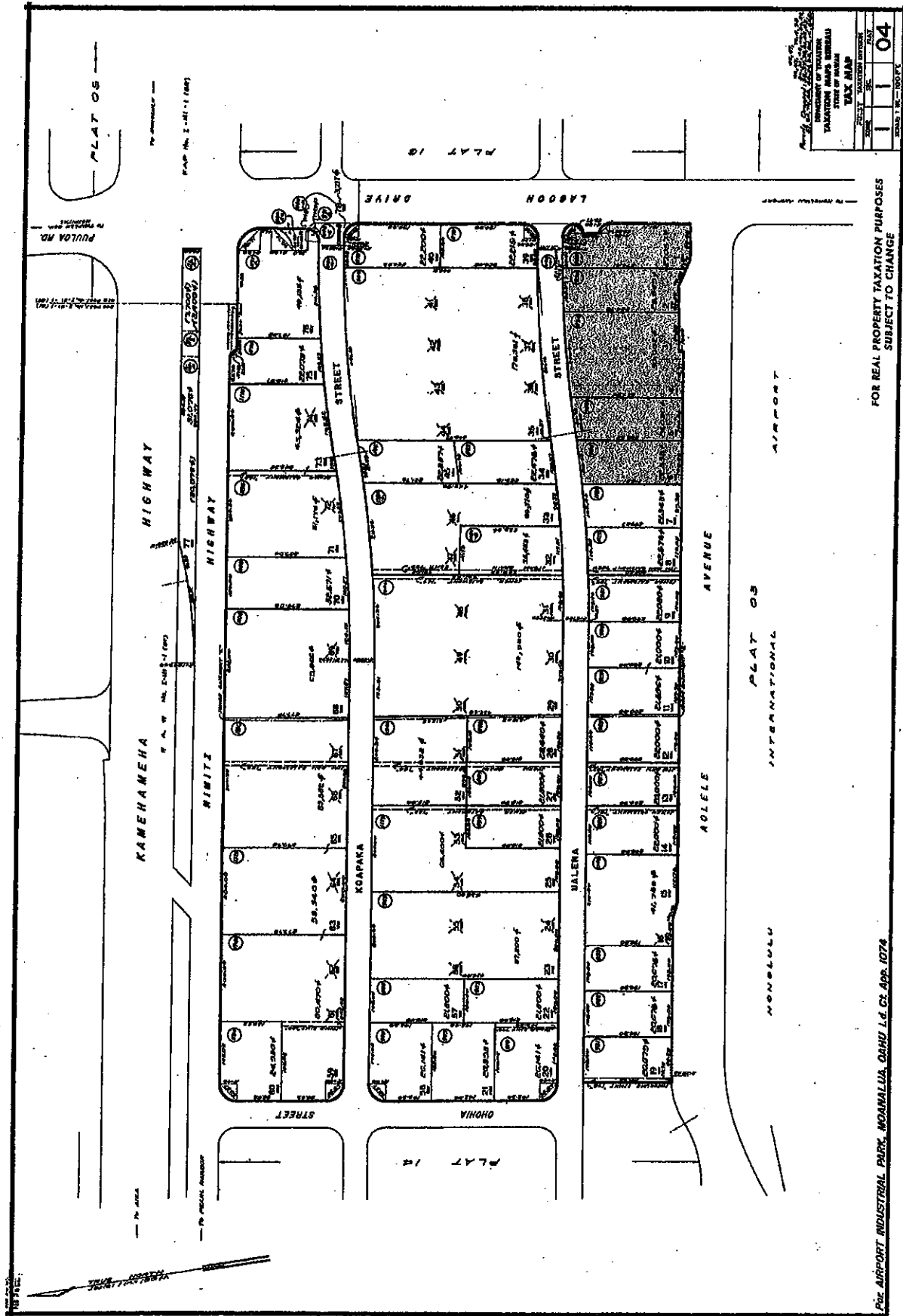
 FEDERAL AVIATION ADMINISTRATION U.S. DEPARTMENT OF TRANSPORTATION		 FEDERAL BUREAU OF INVESTIGATION U.S. DEPARTMENT OF JUSTICE	
PROJECT TITLE : HONOLULU INTERNATIONAL AIRPORT AT HAWAII, TERRITORY OF HAWAII ISLAND OF OAHU, HAWAII			
PROJECT NO. : ASI011-12			
SHEET TITLE : Boundary Map (Exhibit A)			
DATE : JAN 2001		SHEET : 1	
OF 1 SHEET			

# **EXHIBIT B**

## **SUMMARY OF SALIENT INFORMATION**

TMK	1-1-04:01	1-1-04:02	1-1-04:03	1-1-04:05	1-1-04:06
<b>Site Data:</b>					
Land Area	.62 Acres	.60 Acres	1.16 Acres	.55 Acres *	.52 Acres
LUO	Urban	Urban	Urban	Urban	Urban
CZO	I-2 Intensive Industrial	I-2 Intensive Industrial	I-2 Intensive Industrial	I-2 Intensive Industrial	I-2 Intensive Industrial
<b>Improvement Data:</b>					
No. Bldgs.	2	2	2	2	1
Construction	1-Story; Concrete	1 & 2-Story; Concrete	1-Story; Concrete/Steel	1-Story; Concrete/Steel	1-Story; Concrete
Year Built	1963	1962	1963	1974	1964
Condition	Average	Average	Average	Average	Average
Area	—	8,400 sf	28,900 sf	3,144 sf	8,620 sf.
Whse.	—	6,000 sf	—	3,241 sf	—
Office.	—	500 sf (mezz. office)	3,276 sf (mezz. office)	1,440 sf (carport)	1,000 sf (mezz. storage)
Other (Type)	1,568 sf (service station)	950 sf (mezz. storage)	1,322 sf (mezz. storage)	—	—
Other (Type)	2,600 sf (com./retail)	15,850 sf	33,498 sf	7,825 sf	9,620 sf
Total	5,168 sf	Commercial/Industrial	Office/Industrial	Office/Industrial	Industrial
Current Use	Service station & Bar				
<b>Assessed Values:</b>					
Land (per s.f.)	\$2,053,000 (\$75.88)	\$1,448,200 (\$55.81)	\$2,474,600 (\$48.85)	\$269,200 (\$85.49) **	\$1,855,800 (\$72.68)
Improvement (per s.f.)	255,500 (\$49.44)	595,300 (\$37.57)	991,800 (\$29.61)	398,400 (\$50.91)	394,600 (\$41.02)
Total	\$2,308,500	\$2,043,700	\$3,446,400	\$667,600	\$2,250,400
<b>Encumbrance:</b>					
Type (Ref. No.)	Lease (DOT-A-95-24)	RP's 5270/5851/5272/5769	Lease (DOT-A-95-26)	RP's 6122/6128	Lease (DOT-A-95-32)
Term	Exp. 2012	Mo.-to-mo.	Exp. 2012	Mo.-to-mo.	Exp. 2012
Current Ann. Rent	\$105,522.36 (thru 2012)	\$78,264.00	\$197,581.80 (thru 2012)	\$83,652.00	\$87,866.50
<b>Valuation:</b>					
Methodology	Fee simple subj. to lease	Fee simple	Fee simple subj. to lease	Fee simple	Fee simple subj. to lease
	Present value of lease	Current property assessed	Present value of lease	Current property assessed	Present value of lease
	rents and reversionary	value	rents and reversionary	value	rents and reversionary
	property value @ 8%/ann		property value @ 8%/ann		property value @ 8%/ann
Estimated Value	\$2,126,258	\$2,043,700	\$3,285,786	\$667,600	\$2,030,996
Rounded (nearest \$10k)	\$2,130,000	\$2,040,000	\$3,290,000	\$670,000	\$2,030,000
<b>TOTALS:</b>					
Assessed Values		\$10,766,600			
Estimated Valuation (Rounded)		\$ 9,550,000			

\* Per tax office records Parcel 5 has a land area of 3,149 s.f.. However, recorded deed documents and tax maps indicates Parcel 5 has a land area of 24,030 sf, or .55 ac.  
 \*\* Land tax assessments and per square foot assessments are based on the 3,149 sf land area identified in tax records.



LINDA LINGLE  
GOVERNOR



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

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LAND DIVISION

2008 OCT 22 P 3 08

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

BRENNON T. MORIOKA  
DIRECTOR

Deputy Directors  
MICHAEL D. FORMBY  
FRANCIS PAUL KEENO  
BRIAN H. SEKIGUCHI  
JIRO A. SUMADA

IN REPLY REFER TO:

AIR-PM  
08.0694

October 17, 2008

Mr. Ron V. Simpson  
Manager, Airports District Office  
Federal Aviation Administration  
Western Pacific Region  
P.O. Box 50244  
Honolulu, Hawaii 96850-0001

Dear Mr. Simpson:

Subject: Total Release from Grant Agreements of up to approximately 626 acres  
of Land near Kona International Airport, North Kona, Island of Hawaii  
TMK: (3) 7-3-43:01 por., 02 por. & 03 por. (Subject Property)

The State of Hawaii, Department of Transportation (DOT) respectfully requests the Federal Aviation Administration (FAA) under FAA Order 5190.6A, Chapter 7, Section 3, Paragraph 7-18 approve a total release of the above-referenced Subject Property located near the Kona International Airport at Keahole (Kona Airport), Island of Hawaii, from the terms and conditions of the applicable grant agreements with the FAA. As explained below, DOT has determined these lands are not critical for airport activities and/or airport facilities. In addition, there was no federal investment in these lands i.e., federal Airport Improvement funds were not used to acquire or improve the Subject Property.

The following information is provided in support of DOT's request for a total release of the Subject Property and responds to the specific questions listed in FAA Order 5190.6A, Chapter 7, Section 5, Paragraph 7-36.

(a) What agreement(s) with the United States are involved?

*Response: A federal grant was utilized in the Update Airport Master Plan Study and Noise Compatibility Plan Study, Kona International Airport at Keahole, State Project No. AH-2011-04, AIP Project No. 3-15-0008-26, Contract No. DTFA08-06-C-50540 dated August 23, 2006. The grant specified that the Sponsor shall comply with the Part V. Assurances dated 3/2005.*

*In addition, the DOT has received many federal grants for Kona Airport, the most recent was AIP Project No. 3-15-0008-29, Contract No. DTFA08-08-C-50592 dated June 20, 2008, which also specified compliance with all grant assurances.*

(b) What is requested?

*Response: DOT is requesting a total release of the Subject Property to allow these lands to be returned to the State of Hawaii, Department of Land and Natural Resources (DLNR). The Subject Property consists of up to approximately 626 acres as shown on the recommended master plan attached as Exhibit B.*

*DLNR is the manager of the public land trust and has a fiduciary duty to manage the public lands for the benefit of the State of Hawaii and beneficiaries of the public land trust.*

*On August 20, 1981, DLNR transferred approximately 4,201.1 acres of public lands in Kona, Island of Hawaii (Exhibit A) to DOT by Governor's Executive Order No. 3074 (EO) expressly for "airport, an energy research project, and their associated purposes". The lands were transferred at no cost to DOT, and no federal funds were involved in DOT's acquisition of the Subject Property. Of the 4,204.1 acres transferred to DOT, 317.7 acres was acquired with DOT Airport special funds (airport revenues) by condemnation (Civil No. 2165 on June 30, 1971), a small portion of which may be included in the Subject Property.*

*As shown on Exhibit A, Portions of the lands transferred under the EO are currently developed and include the Kona Airport and an energy research facility/complex operated by the National Energy Laboratory of Hawaii Authority. The Subject Property, however, remains vacant and unimproved and has never been utilized since DOT's acquisition in 1981. DOT has determined the Subject Property is not required for the operation of the Kona Airport and is not critical for airport activities and/or airport facilities (or for any of the other purposes specified in the EO), as shown on the current master plan as well as Alternatives 1 and 2, each are attached as Exhibits B, C and D, respectively. As such, DOT wishes to return the Subject Property to DLNR.*

*Since DOT has determined the Subject Property is not necessary for airport facilities or purposes, or for any of the other purposes specified in the EO, the return of the Subject Property to DLNR will allow DLNR to put these lands to a higher and better use to better serve the State of Hawaii, the general public, and public land trust beneficiaries.*

(c) Why the release, modification, reformation or amendment is requested?

*Response: See response to Question (b) above.*

(d) What facts and circumstances justify the request?

*Response: See response to Question (b) above.*

(e) What requirements of state or local law should be provided for in the language of an FAA issued document if the request is consented to or granted?

*Response: None that we know of at this time.*

- (f) What property or facilities are involved?

*Response: The Subject Property consists of up to approximately 626 acres as generally shown on the Recommended Master Plan concept (Exhibit B), and is a portion of Tax Map Key Nos. (3) 7-3-43:01, 02 & 03. Alternative land uses plans proposing smaller areas to be released are attached as Exhibits C and D as well.*

- (g) How the property was acquired or obtained by the airport owner?

*Response: See response to Question (b) above.*

- (h) What is the present condition and what present use is made of any property or facilities involved?

*Response: The Subject Property remains vacant and unimproved and has never been developed, improved or utilized.*

- (i) What use or disposition will be made of the property or facilities?

*Response: The Subject Property will be returned to DLNR, which owns and manages the majority of the State of Hawaii's public lands. As the manager of the public land trust, DLNR will put the Subject Property to higher and better uses for the benefit of the State, the general public, and the public land trust beneficiaries.*

- (j) What is the FMV of the property or facilities?

*Response: Tax-assessed values for TMKs (3) 7-3-43:01, 02 & 03 indicates a pro rata tax assessment of \$3,010,503 for the Subject Property.*

- (k) What proceeds are expected from the use or disposition of the property and what will be done with any net revenues derived?

*Response: As explained above, DOT acquired the Subject Property from DLNR at no cost. Accordingly, DOT does not expect to derive any revenues or payments from DLNR for the return of the Subject Property.*

- (l) A comparison of the relative advantage or benefit to the airport from sale or other disposition as opposed to retention for rental income?

*Response: DOT has determined the Subject Property is not required for the operation of the Kona Airport and is not critical for airport activities and/or airport facilities or for any of the other purposes specified in the EO. No income has ever been generated from the Subject*

Mr. Ron V. Simpson  
October 17, 2008  
Page 4

AIR-PM  
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*Property and DOT does not have any plans to develop the Subject Property for any rental income purposes.*

*Furthermore, any lands set aside under an EO that are not used for the purposes stated in the EO must be returned to DLNR pursuant to the terms of the EO and Section 171-11 of the Hawaii Revised Statutes, as amended.*

- (m) A plan identifying the intangible benefits, if any, accruing to the airport, the amount attributed to the intangible benefits and the merit of their application as an offset against the FMV of the property to be released. The plan should also include as a minimum:

*Response: Not applicable. DOT acquired the Subject Property at no cost and will be returning the property to DLNR at no cost.*

Finally, enclosed are the exhibits as required by FAA Order 5190.6A, Chapter 7, Section 5, Paragraph 7-36(4).

We believe the above information supports DOT's request for a total release of the Subject Property and look forward to receiving a favorable determination from the FAA. If you have any questions regarding this request or require any additional information, please contact Mr. Sidney Hayakawa, Airports Administrative Services Officer, at 838-8704.

Very truly yours,

*Francis Paul Keeno*

*for* BRENNON T. MORIOKA, Ph.D., P.E.  
Director of Transportation

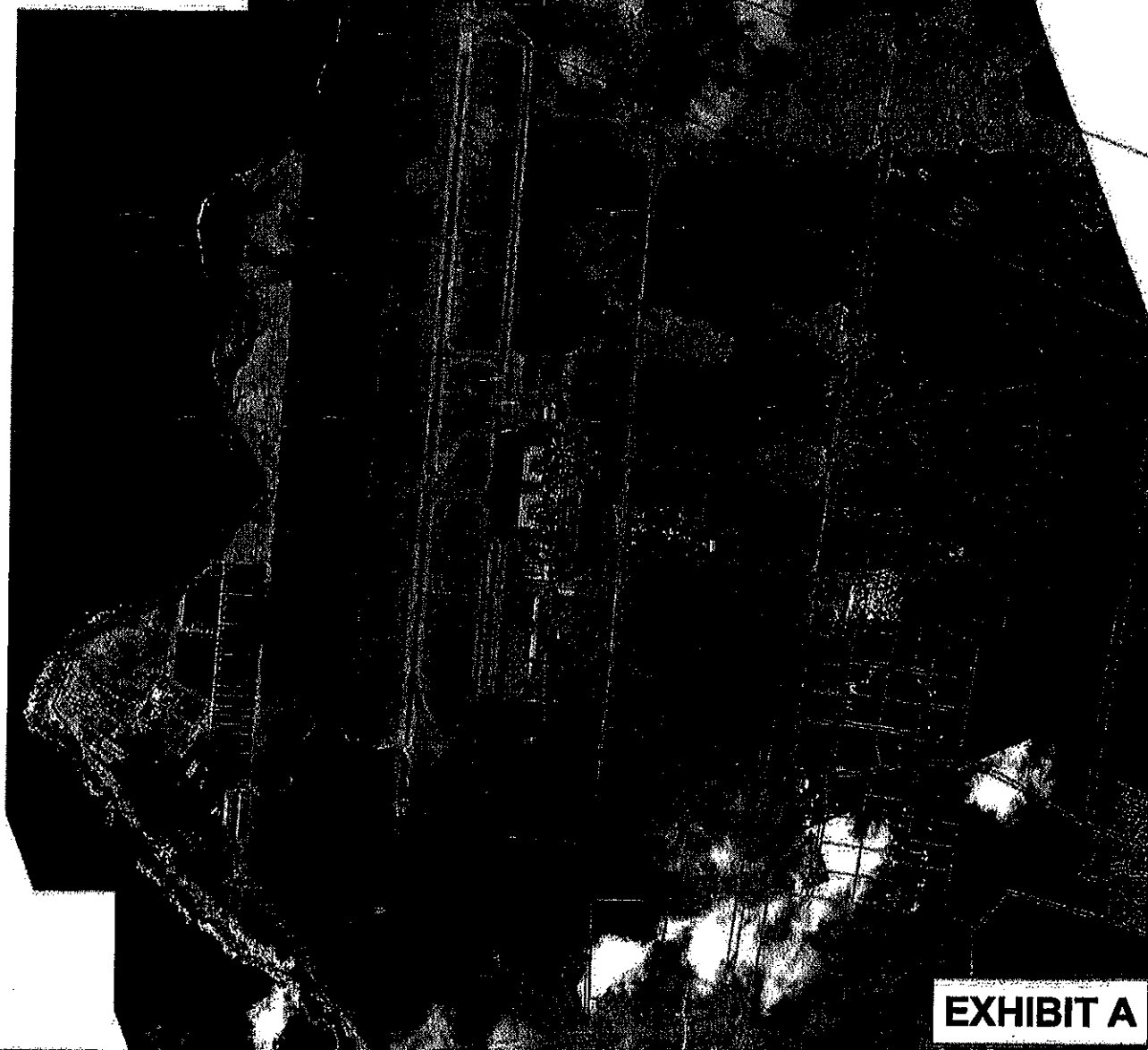
Enclosures

bc: DEP-A  
✓DLNR

# KONA AIRPORT (EO 3074)



0 145290 580 870 1,160  
Meters



**EXHIBIT A**

**Recommended Master Plan Concept**  
Approximate area 626 acres

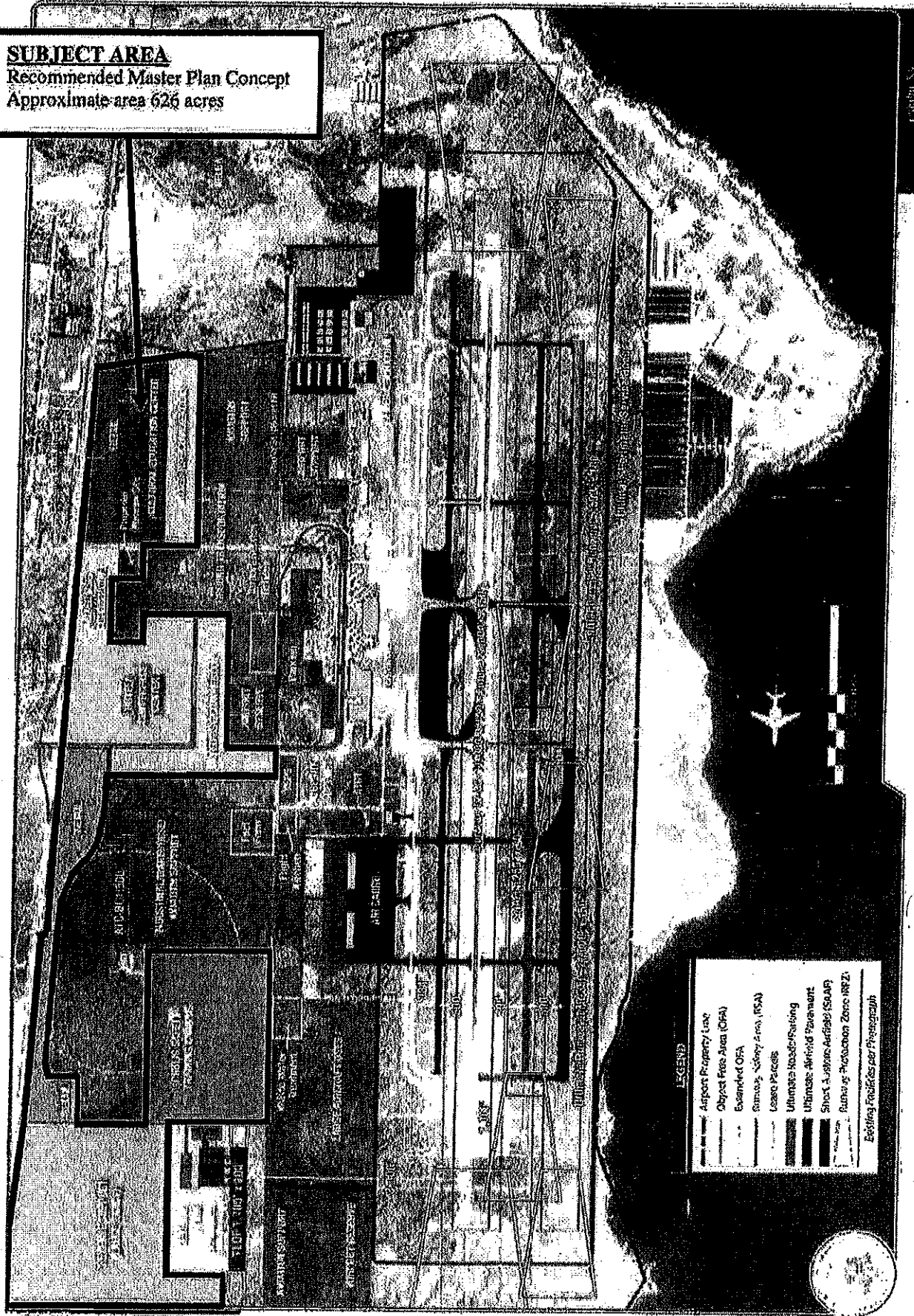


EXHIBIT B

**SUBJECT AREA**  
Alternative 1  
Approximate area 383 acres.



EXHIBIT C



## HNL ADO Evaluation of DLNR Land Release Requests

HDOT letters to FAA dated October 17, 2008

### **Total Release of Ualena Street Parcels at Honolulu International Airport**

- Property was purchased with airport revenues.
- Property serves a "revenue producing use" purpose for the airport.
- Proposal to swap for Kanoalehua Avenue (Hilo) parcel at fair market value plus additional money for the difference is not equitable; no consideration for revenue loss.
- Request for release FAA views as airport revenue diversion violation – revenues are needed for future airport forecast financial projections.

*The FAA Reauthorization Act of 1994* required the Department of Transportation/FAA to establish policies and procedures to assure the prompt and effective enforcement of the airport revenue diversion prohibition and the requirement that airports be as self-sustaining as possible, prohibited the use of airport revenues for several specific types of payments and required annual financial reports from airports.

*The 1996 FAA Reauthorization Act* created a direct statutory prohibition against revenue diversion by any federally assisted airport; required audit certification of each federally assisted airport's compliance with revenue use restrictions; and added new provisions on civil penalties, expedited procedures for recovery of illegally diverted revenues, repayment of past contributions to an airport, and interest on diverted funds.

**FAA Position** - we cannot consent to release revenue producing Ualena Street property. The release of revenue producing properties will constitute revenue diversion from the airport to another state agency, and will be a violation of the compliance obligations.

### **Total Release of 1,692.0 acres of Land in Keehi Lagoon at Honolulu International Airport**

- Active seaplane lanes should be excluded from consideration; established aeronautical use must be accommodated.
- Approach/departure corridor for reef runway should be excluded, including proposed turtle habitat; control should remain in jurisdiction of airport.
- Areas adjacent to and abutting reef runway should be excluded; airport security issue.
- FAA ATO operational concerns must be addressed (reference attachment), construction activities in triangle will impact airport operations.

**FAA Position** – we may consider release of submerged triangle to Sand Island shoreline. The seaplane lanes, areas under the approach/departure corridor for reef runway, and areas adjacent to and abutting reef runway will not be released.

### **Total Release of 626 acres of Land at Kona International Airport**

- The Kona Airport is not self-sustaining. Land for potential revenue generation should be retained by airport.

## DLNR Land Release Request to HDOT Airports

### Conditions for Land Releases

Specified in FAA Order 5190.6B, Chapter 22, *Airport Compliance Manual*.

#### *Paragraph 22.1. Introduction.*

*Any property, when described as part of an airport in an agreement with the United States or defined by an ALP, is considered to be "dedicated" or obligated for airport purposes by the terms of the agreement. If any of the property so dedicated is not needed for present or future airport purposes, an amendment to, or release from, the agreement is required.*

#### *Paragraph 22.4. Consideration of Releases.*

*a. General. Within the specific authority conferred upon the FAA Administrator by law, the FAA will, when requested, act to release, modify, reform or amend any airport agreement to the extent that such action will protect, advance, or benefit the public interest in civil aviation. Such action may involve only relief from specific limitations or covenants of an agreement or a complete and total release that authorizes a subsequent disposal of obligated airport property.*

**FAA Position:** HDOT Airports must obtain FAA consent for release of obligated land.

### Evaluation of Land Release Requests

#### *Paragraph 22.27. FAA Evaluation of Sponsor Requests*

*When a request has been received, supported by the appropriate documentation and exhibits, an evaluation of the total impact of the sponsor's proposal shall be made. This evaluation shall be based on the policy stated in paragraph 22.27 and shall include consideration of pertinent factors such as:*

*(b) The sponsor's past and present compliance record under all its airport agreements and its actions to make available a safe and usable airport for maximum aeronautical use by the public. If there has been non-compliance, evidence that the sponsor has taken or agreed to take corrective action.*

**FAA Position:** No releases can be considered until the outstanding items and compliance issues of the Hawaii Land Use Assessment are resolved. FAA compliance policy dictates that releases should not be granted when compliance problems exist.

### FAA Order 5190.6B Requirements for Land Releases

- Most important release criteria consideration is the need to prove that airport land is not needed for airport purposes now or in the future. An airport purpose includes RPZ land and "revenue producing uses" even if the use is non-aeronautical in nature.
- HDOT Airports must receive fair market value (FMV) for land released.



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

Western-Pacific Region  
Airports District Office

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300 Ala Moana Blvd., Rm. 7-128  
P. O. Box 50244  
Honolulu, Hawaii 96850-0001  
Tel: (808) 541-1232  
Fax: (808) 541-3566

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& NATURAL RESOURCES  
STATE OF HAWAII

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NATURAL RESOURCES  
STATE OF HAWAII

2010 MAY 18 A 10:35

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LAND DIVISION

May 11, 2010

Mr. Brennon T. Morioka  
Director  
State of Hawaii  
Department of Transportation  
869 Punchbowl Street, Room 509  
Honolulu, HI 96813-5097

Subject: Hawaii Land Use Audit and  
Request for Airport Land Release

Dear Mr. Morioka:

As disclosed in our last letter dated December 22, 2009, we do not concur with the Hawaii Department of Land and Natural Resources' (DLNR) prior suggestion for a land exchange that proposed to trade a parcel at Kanoalehua Avenue for land at Ualena Street. Nevertheless, the FAA still seeks to establish compatible land use for the Runway 3 Runway Protection Zone at Hilo International Airport.

We have evaluated the proposal discussed at the January 11, 2010 meeting that would allow the Hawaii Department of Transportation to acquire the Kanoalehua Avenue parcel from the DLNR.

We determined the FAA can support this proposal as long as the following conditions can be fulfilled:

1. The acquisition cost may be funded with airport revenue or State of Hawaii Special Funds.
2. The property must be properly identified in the Deed (metes and bounds) and the Airport Layout Plan and Exhibit A updated to show the parcel is airport property.
3. The acquisition price may be based on fair market value rates.
4. The acquired parcel will remain under airport's custody and authority in perpetuity as long as the airport exists.
5. There should be a written agreement to document the monetary payment and the transfer of the land to Hawaii Department of Transportation Airports Division (HDOTA).

5/18 ey:HDLO

6. There should also be a signed commitment to use best efforts to obtain Governor's approval of an Executive Order memorializing the transaction and recognizing the land is in the custody of HDOTA.

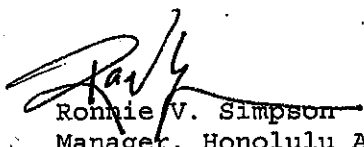
7. This determination for the proposal to acquire subject parcel at Kanoalehua Avenue does not establish precedent for future land use issues, acquisitions, or releases. Each case must be evaluated on its own merits and will be decided based on airport specific circumstances, federal law, and FAA policy.

We have also considered DLNR's request that the additional land release proposal for Kona International be separated from the resolution of the Land Use Audit. We are not at liberty to alter FAA compliance requirements. As we previously disclosed, FAA Order 5190.6b, Airport Compliance Manual requires that we evaluate the State's compliance record and willingness to resolve outstanding compliance issues. In view of the circumstances, the FAA cannot separate the land release request from the Land Use Audit issues that remain unresolved.

We remind the State, based on our letter dated December 22, 2009, that a formal corrective action plan is still needed to resolve non-conforming conditions and bring the State into compliance with the grant assurances. Consideration of a land release will have to remain in abeyance until satisfactory corrective action has been completed and all the Land Use Audit issues are satisfactorily resolved.

If you have any questions, please do not hesitate to call me at (808) 541-1232.

Sincerely,



Ronnie V. Simpson

Manager, Honolulu Airports District Office

cc: Ms. Laura Thielen, Chairperson, Hawaii DLNR  
Brian Sekiguchi, HDOT Deputy Director - Airports



U.S Department  
of Transportation  
  
Federal Aviation  
Administration

Western-Pacific Region  
Airports Division

Federal Aviation Administration  
P.O. Box 92007  
Los Angeles, CA 90009-2007

April 24, 2007

Brian Sekiguchi  
Deputy Director - Airports  
Hawaii Department of Transportation  
Honolulu International Airport  
400 Rodgers Blvd., Suite 700  
Honolulu, HI 96819-1880

Dear Mr. Sekiguchi:

### **State of Hawaii Airports Land-Use Assessment Report**

This report describes the findings and recommendations resulting from the Federal Aviation Administration (FAA) land-use assessment of State of Hawaii airports during the period June 5 to 16, 2006. During our visit, we evaluated five airports operated by the Hawaii Department of Transportation-Airports (HDOTA) for the State of Hawaii (State). They are Honolulu International Airport (HNL), Lihue Airport (LIH), Kona International Airport (KOA), Hilo International Airport (ITO), and Kalaeloa Airport (JRF). We wish to thank you and your staff for the time and attention you devoted to our visit and for the cooperation you provided.

#### Land-Use Assessments

Land-use assessments and inspections serve as a means for the FAA to perform surveillance and compliance oversight of federally obligated airports in order to assess whether or not airport sponsors are complying with the requirements to which they pledged to adhere in exchange for federal aid. Inspections are part of a national program that is being conducted pursuant to Senate Report No. 106-55, dated May 1999. Congress directed that the FAA conduct land-use assessments at airports that have received federal assistance in order to detect if inappropriate or unauthorized land uses exist. The FAA must disclose in its reports to Congress the identity of all airports that have land-use discrepancies and must provide Congress with the FAA's plans for eliminating any unauthorized uses discovered during airport assessments.

During our visit, we toured State airports to assess the current uses of airport land and facilities, met with HDOTA and other State government officials, and examined airport

evidence that any airline has been unreasonably denied access or granted an exclusive right. In the absence of evidence to the contrary, the presence of only two airlines in Terminal 2 cannot be construed as an illegal exclusive right. As a result, we did not conclude that an illegal exclusive right exists. Therefore, we have not concluded that there is a violation of Assurance 23.

#### Kapalama Military Reservation

The State acquired KMR from the U.S. Army at a cost of approximately \$98 million. HDOTA contributed airport revenue in the amount of approximately \$8.2 million towards the acquisition cost. HDOTA planned to use some of the land to relocate tenants from other land acquired adjacent to the airport and did relocate one tenant to KMR land.

Until recently, HDOTA has been receiving 8.35% of the total revenues derived at KMR, which is largely under the management of the Hawaii Harbors Division. The payments to HDOTA by Harbors Division represent compensation for HDOTA's contribution to the total purchase price of KMR. Harbors Division is supposed to repay the \$8.2 million. However, we understand that the Harbors Division may have suspended payments to HDOTA. Furthermore, we were not able to determine when HDOTA will be repaid in full.

As compensation for a voluntary surrender of 11 acres of land under HDOTA's control at Sand Island, HDOTA expected to receive about 11 acres of KMR land to be dedicated to the airport as a replacement for the land it surrendered. HDOTA was assigned approximately 11 acres of KMR land for which HDOTA paid \$17,543. Subsequently, HDOTA was compelled to spend approximately \$300,873 on demolition and improvements on the 11 acres, which did not have an airport-related purpose.

HDOTA has spent more than \$8.5 million in airport revenue in support of the KMR land acquisition and, as yet, has not received airport-related benefits commensurate with its investment of airport revenue. The State has not officially set aside any land in KMR for airport use and for HDOTA to manage for airport purposes.

In spite of HDOTA's initial \$8.2 million investment plus the additional \$318,416 investment in the 11 acres, it now appears that State officials have determined that the highest and best use of all KMR land is for harbor and port operations and not airport-related purposes. If the Harbors Division remains the sole beneficiary of the KMR land acquisition and HDOTA does not receive an equitable amount of land equal to its investment, the State of Hawaii will be obligated to repay the funds that HDOTA contributed towards the acquisition of and improvements to KMR.

In accordance with US Code 47107(b) and 47133, airport revenue may only be used for the capital and operating costs of an airport, an airport system, or other locally owned facilities directly related to air transportation. HDOTA expended approximately \$8.5 million trying to acquire and improve KMR land, but no land has been set aside to HDOTA for airport purposes. Therefore, the expenditure of \$8.5 million does not represent a permitted use of airport revenue. As a result, the State will have to refund

The runway protection zone (RPZ) on the approach end to runway 3 for runway 3/21 lies outside the airport boundary. A portion of the land in the RPZ is private property and a rectangular parcel is owned by the State and controlled by another State agency. Commercial development has been proposed for the State-owned parcel. The proposed use of the RPZ for commercial development conflicts with FAA airport design standards.

Advisory Circular 150/5300-13, *Airport Design*, defines the RPZ as an area adjacent to the runway ends that is meant to enhance the protection of people and property on the ground. The design standard is meant to keep the RPZ free of people and objects. This is best achieved if the airport owner fully controls the RPZ. Control includes clearing and maintaining the RPZ free of incompatible objects and activities. The best control is an ownership interest in the RPZ property. Where ownership is not possible, airport owners must use other means such as zoning and land-use restrictions to maintain the RPZ clear of undesirable uses.

#### RPZ and Part 77

The State owns part of the RPZ at the runway 3 end. Therefore, the State can control land use in the area of the RPZ that it owns. By definition, the RPZ is an integral part of airport design standards. Therefore, the RPZ has a clear airport purpose and the State should ensure that it serves that purpose. The parts of the RPZ that are State owned should be part of the airport so it can be properly managed by HDOTA to serve the airport purpose that it is intended to serve.

State officials informed us that plans were made for commercial development in the RPZ because it would produce revenue for the State. The proposed structures were evaluated in accordance with 14 CFR Part 77, and it was determined that the structures would not represent an airspace obstruction. As a result, State officials concluded that the project was an appropriate use of the RPZ.

Unfortunately, the proposed development is not an appropriate use of the RPZ because it does not conform to airport design standards. The State agreed to follow FAA airport design standards when it accepted federal grant funds (Assurance 34, *Policies, Standards, and Specifications*). Advisory Circular 150/5300-13, *Airport Design*, makes use of the standards mandatory for airports that receive grant assistance.

We wish to point out that Part 77 airspace regulations are not intended to facilitate development in the RPZ. As stated above, the RPZ is meant to enhance safety. Safety is assured and liability risk is reduced when the RPZ is free of people and structures. Therefore, airspace studies should not be used to justify commercial structures in the RPZ. Such structures are generally incompatible with the RPZ and do not belong in the RPZ.

#### Airport Storage Hangar

Airport management is presently using an old ITO hangar to store equipment. Therefore, the hangar clearly has an airport purpose. The control of the land under the hangar was recently transferred to the Department of Land and Natural Resources (DLNR). Since

facilities on or along the flight line or in the airport operations area (AOA). Businesses with both aviation and non-aviation components such as PLK Air Services Group should be given an airport location where their land-side operations do not occupy aeronautical land or interfere with aeronautical development.

Furthermore, to preserve airport land for future aeronautical development, Shoreline Access Road should not become a public thoroughfare. If allowed to become a public street, Shoreline Access Road will dissect the airport and separate a portion of airport land from the airfield and prevent it from being used for aeronautical purposes in the future.

The United States Postal Service (USPS) owns a parcel of land at Kona Airport and, at HDOTA's request, is negotiating to exchange its land for another airport parcel. We did not determine how the USPS acquired airport land, but the HDOTA should be aware that it may not dispose of federally obligated airport land without the approval of the FAA. Furthermore, the USPS does not enjoy any special entitlement to cost-free space at airports or a right to acquire airport land without FAA approval.

HDOTA is proposing to place the new postal facility in a location adjacent to the flight line. The proposed location is not appropriate if the USPS does not have an aviation component. The new postal facility should not be allowed to occupy aeronautical property adjacent to the flight line if it does not have aircraft operations or an aeronautical need to be there. Rather, the postal facility should be located elsewhere at the airport in a location that is not needed or cannot be used for aeronautical activities.

#### Resolution

We recommend that Shoreline Access Road remain an interior airport-only access road. Public use of the road should be prohibited.

We recommend that HDOTA find an airport location for the USPS that is not on the flight line or next to an aircraft ramp if the postal facility does not have a defined aeronautical function that requires it to be located along the flight line.

Special planning is necessary if a business has both air and land components such as a facility like FedEx or the proposed operating plan of PLK Air Services Group. In this case, the facility should be designed and located on airport property so the land operations are separated from the airside operations. For example, if PLK Air Services Group builds a facility at KOA, HDOTA should find an airport site where the airside and landside parts of the business can be accommodated without consuming limited ramp space and producing a negative impact on airport operations or development.

#### Lihue Airport

We examined the Airport Layout Plan and aerial photographs of the airport to assess land-use practices. We were informed that planning is under way for residential development next to the airport and its runways.

### Fuel Tax and Fuel Flowage

Fees on fuel provide a rich source of revenue. Fuel taxes can be used to support state aviation programs. Fuel flowage fees are a dependable source of airport revenue. Assurance 24, *Fee and Rental Structure*, requires that airports be as self-sustaining as possible. Fees on fuel are a usual and customary way that airport sponsors meet their operating and maintenance costs. HDOTA should endeavor to use both to subsidize the capital and operating costs of the State airport system.

### Non-Aeronautical Tenants

The blind vendors retail operations represent a non-aeronautical activity for which HDOTA must charge rental rates equivalent to fair market value. Blind vendors have not received an exemption from the FMV requirement. Blind vendors do already enjoy privileged treatment because they have been given an exclusive right at State airports that allow them to earn substantial income without competition. They are subject to the requirements of the grant assurances and the law and, therefore, must be asked to pay fair market rent as other vendors and concessionaires do. Fair market rental rates should not impose a financial hardship on their operations.

As with blind vendors, all concessionaires engaging in non-aeronautical businesses at the airport must pay fair market value rent. An important provision in the Revenue Use Policy is that aeronautical tenants may not subsidize non-aeronautical tenants. Therefore, when imposing joint use charges on signatories, the cost of space occupied by concessions should not be allocated to the airlines. Concessionaires should pay for the exclusive use of the retail space they occupy.

Parking concessions are a non-aeronautical activity that can earn substantial income for the State airports. As non-aeronautical activity, parking operations must pay fair market value rents to the airport.

Airport leases should be updated periodically. All agreements should contain provisions to adjust the rental rate periodically so rates keep pace with inflation and market conditions. Leases have to be updated to keep them fresh and current. For example, items such as inflation, insurance requirements, environmental laws, indemnification provisions, airport policies, minimum standards, rates and charges, etc. change over time. Leases should be amended or rewritten as they expire or come up for renewal so important changes can be incorporated into the new and revised leases.

### Resolution

In accordance with the Revenue-Use Policy, which implements the requirements of Assurances 24, *Fee and Rental Structure*, and Assurance 25, *Airport Revenue*, non-aeronautical commercial activities are all subject to rates and charges that are based on fair market value.

with airport design standards. Land owned by the State should be set aside for airport purposes and controlled by HDOTA.

**2b. Airport Storage Hangar (Page 5)**

HDOTA should be allowed to retain the control of the hangar it is presently using, and the State should set aside the hangar parcel to the airport by means of a set-aside or land-use agreement.

**2c. General Aviation Land (Page 6)**

HDOTA should request that the State set aside land adjacent to the general aviation area of the airport so the area can be redeveloped in the future with new aeronautical facilities in order to preserve the area for GA operations.

**3. Kona**

**3a. Shoreline Access Road (Page 7)**

HDOTA should ensure that Shoreline Road remains an interior access road for airport-use only and does not become a public thoroughfare.

**3b. United States Postal Service (Page 7)**

HDOTA should negotiate with USPS to relocate the new postal facility elsewhere at the airport where it will not occupy or interfere with airfield operations, especially if the new postal facility does not have any aeronautical need to be on the airport operations area.

**3c. PLK Air Services Group (Page 7)**

HDOTA should endeavor to locate all mixed-use operations that have both ground and aviation components in a location at the airport so the ground operations are separated from the airfield, are not allowed to occupy airfield space, and do not interfere with any aeronautical operations.

**4. Lihue**

**4a. Incompatible Land Use (Page 8)**

HDOTA must take reasonable action to prevent residential development next to the airport in order to avoid likely attempts by homeowners to restrict airport operations or close the airport.

**4b. Runway Protection Zone (Page 8)**

HDOTA must take appropriate action to ensure the RPZ conforms to airport design standards by preventing any new development in the RPZ or by obtaining a title interest to the land or the airspace over the land.

**5. Other Issues**

Members of the Honolulu Airports District Office expect to meet with you in the near future to discuss your plans for addressing all the issues that are described in this confidential report. They shall also expect HDOTA to develop a plan to address or correct all the issues as well as a schedule for completing each action.

In the meantime, if you have any questions or wish to discuss this matter, please call Ron V. Simpson, Manager, Honolulu Airports District Office, at (808) 541-1232.

Sincerely,

A handwritten signature in black ink, appearing to read "Tony Garcia", with a large, stylized loop at the beginning.

Tony Garcia  
Airports Compliance Specialist